

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 ALICIA NUNNERY, *et al.*,)
9 Petitioners,) CASE NO. C05-1732RSM
10 v.)
11 STATE OF WASHINGTON, *et al.*,) ORDER DISMISSING HABEAS
12 Respondents.) PETITION

The Court, having reviewed the Petition for Writ of Habeas Corpus (Dkt. #1), the Report and Recommendation (“R&R”) of the Honorable Monica J. Benton, United States Magistrate Judge (Dkt. #4), petitioners’ Objections to the R&R (Dkt. #5), and the remaining record, does hereby find and Order:

(1) The Court ADOPTS the Report and Recommendation with the following additional comments. (Dkt. #5). In her R&R, Judge Benton noted that petitioners had not demonstrated any basis for federal habeas jurisdiction. She noted that because petitioners did not allege that they were in custody in violation of the Constitution or laws or treaties of the United States, a petition for writ of habeas corpus under 28 U.S.C. § 2241 was not a proper mechanism for obtaining the relief they sought. Furthermore, Judge Benton noted that petitioners had not implicated a violation of civil rights under 42 U.S.C. § 1983.

Petitioners have now filed objections, stating that they are filing their complaint pursuant to

26 ORDER DISMISSING HABEAS PETITION

1 both 28 U.S.C. § 2241 and 42 U.S.C. § 1983. Petitioners then proceed to introduce an entirely new
2 claim based on an entirely new set of facts. Petitioners do not at all address the R&R or the basis for
3 the recommendation denying the initial “federal habeas petition.”

4 While the Court first notes that it is not appropriate to introduce a new claim based on a new
5 set of facts in Objections to an R&R, the Court also finds that nothing in the objections demonstrates
6 appropriate jurisdiction in this Court. More importantly, nothing in the objections demonstrates that
7 Judge Benton’s R&R is incorrect in any manner. Accordingly, this Court finds denial of petitioners’
8 habeas petition appropriate.

9 (2) Petitioners’ federal habeas petition (Dkt. #1) is DENIED, and this action is DISMISSED
10 without prejudice.

11 (3) Petitioners’ motion for court appointed counsel (Dkt. #2) is STRICKEN as moot.

12 (4) The Clerk is directed to send copies of this Order to petitioner, and to Judge Benton.

14 DATED this 16th day of December, 2005.

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18 RICARDO S. MARTINEZ
19 UNITED STATES DISTRICT JUDGE
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26 ORDER DISMISSING HABEAS PETITION